IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5762 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRITKUMAR VINODRAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR TS NANAVATI for Petitioner

Mr K G Sheth, APP for respondent No. 1

MR GC RAY for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/01/2001

C A V JUDGEMENT

The petitioner has filed this petition under Section 482 of the Criminal Procedure Code, 1973 for

staying further proceedings in Criminal Case No. 362 of 1996 pending in the Court of learned metropolitan Magistrate, Court No. 16, Ahmedabad pending hearing and disposal of Civil Suit No. 399 of 1996 pending in the Court of City Civil Court at Ahmedabad. It appears that the contesting respondent has filed aforesaid Civil Suit against the petitioner for recovery of money. It also appears that the contesting respondent has also filed Criminal Case No. 362 of 1996 before the Court of learned Metropolitan Magistrate, Ahmedabad for offence punishable under Section 183 of the Negotiable Instrument Act.

2. In the complaint the respondent appears to have contended that the petitioner had issued two cheques on 15.12.1996 and two cheques were presented in the bank and the bank had returned the said two cheques on 17.1.1996 and, therefore, the contesting respondent served the petitioner with notice in January, 1996 and though the notices were issued no payment was made and, therefore, the said complaint was filed. On the other hand, the Civil Suit has been filed for the recovery of money said to be due to the contesting respondent by the petitioner and both the matters are pending. There is no dispute about the same. The petitioner had preferred an application under Section 309 before the learned Magistrate, Copy thereof has been placed at Annexure-H at page. 19. There the petitioner prayed that pending hearing and disposal of the aforesaid civil suit, the proceedings of the criminal case be stayed. The learned Magistrate had considered the arguments advanced by the parties. Thereafter, an order was passed below the said application on 23.11.1998 stating that the said application of the present petitioner was dismissed. The petitioner carried the said matter before the City Sessions Court, Ahmedabad by filing Criminal Revision Application No. 351 of 1998. The learned Addl.Sessions Judge considered the said revision application on merit and dismissed the same by an order dated 19.2.1999. Thereafter, the present petition has been filed under Section 482 of the Criminal Procedure Code, 1973.

4. It has been mainly contended here that considering the civil dispute between the parties and considering the facts, that the contesting respondent has moved for summons for judgement at late stage, this court should stay further proceedings of the aforesaid criminal case pending hearing and disposal of the aforesaid civil suit.

5. On receiving the petition, notice was issued and

Mr. M.S.Shah appears on behalf of the contesting respondent no.2 and Mr. K.G.Sheth, learned APP appears for respondent no.1. I have heard learned advocates for the parties and have perused the papers.

6. Now, it is a fact that the civil suit is pending and criminal case is also pending. There is no dispute about the same. However, the matter was placed before the learned Magistrate for staying the criminal case till the disposal of the civil suit. The learned Magistrate has considered the said aspect on merit and after considering the merit of the rival cases, learned Magistrate has found that it was not a fit case for staying further prosecution of the said criminal case. The said matter was carried before the Sessions Court and there also, the learned Additional Sessions judge concurred with the aforesaid view of the learned Magistrate and dismissed the criminal revision application. Now, therefore it is an admitted position that the two courts below have recorded concurrent finding for stating that this is not a fit case wherein further prosecution of the criminal case should be stayed. The same relief is being sought by the petitioner in the present petition. In the earlier two matters before the learned Magistrate as well as before the learned Additional Sessions Judge, the petitioner has prayed for the stay of criminal case. Here also, the same prayer has been made. Therefore, indirectly it amounts to second criminal revision application is argued on behalf of the contesting respondent. Such a second revision application not permissible and, therefore, technically speaking the application is not maintainable. For this purpose, it would be appropriate to consider the decision of the Hon'ble Supreme Court in the case of Dharampal & Others Vs. Smt. Ramshri & Others, reported in JT 1993 (1) SC 61. There, it has been observed that Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. Therefore, according to principle laid down in the aforesaid decision, the powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Criminal Procedure Code itself.

7. I respectfully follow the above principle laid down by Hon'ble the Supreme Court and hold that the criminal application is indirectly a second criminal

revision application and hence, is barred on applying the principles of Section 397 (3) of the Cr.P.C. 1973.

8. It is required to be considered that mere filing of Civil Suit and mere pendency of Civil Suit between the same parties involving almost similar facts in both the matters would not take away the jurisdiction of the Criminal Court in dealing with the criminal case instituted either on complaint or on charge sheet.

9. In the present case also, it is said that civil suit has been filed and it is pending. That would not mean that no complaint can be filed. The approach of the Civil Court and of the criminal court would be different with respect to the subject matter pending before them. The Civil Court will take care of a decree which could be passed against the borrower-defendant. A criminal court will take care of the ingredients of a particular offence involved in that particular case. The degree of proof may also be different. The standard of proof would be different. Even if the decree is passed, there may not be criminal ingredients and no offence may be made out. Therefore, it cannot be said that since the Civil Suit is pending, the criminal court should not entertain a criminal complaint.

10. On appreciation of arguments advanced by the learned Advocates for the respective parties, I find that no prejudice is likely to be caused to the present applicant, if the further proceedings of criminal case are not stayed. His defence in the criminal case is not likely to be adversely and prejudicially affected in case the further proceedings of the criminal case are not stayed.

11. Hence there is no merit in this application and it is, therefore, ordered to be dismissed at admission stage.

In the result, this petition is without any merit and it deserves to be dismissed. This Criminal Misc.Application is accordingly dismissed. Notice discharged.

Date: 12.1.2001 [D P Buch, J.]
msp.